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**IN THE
COURT OF APPEALS OF INDIANA**

BRYAN B. SULLIVAN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0511-CR-1080

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
Cause No. 49G16-0409-FD-164057

August 24, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Bryan B. Sullivan (“Sullivan”) appeals his convictions of intimidation as a Class D felony¹ and domestic battery as a Class A misdemeanor.² We affirm.

Issue

Sullivan raises one issue; whether the evidence is sufficient to support his convictions of intimidation and domestic battery.

Facts and Procedural History

The facts most favorable to the judgment show that during an incident in their home on September 11, 2004, Sullivan and his wife Starlight Sullivan (“Starlight”) argued for more than five minutes. Sullivan grasped Starlight’s arms and forced her away from the bedroom door. Starlight shoved Sullivan and the two began pushing each other, yelling, screaming, and calling each other names. Tripping over furniture, the two fell to the bedroom floor. Sullivan landed on top of Starlight, pushing his knee into her ribs and repeatedly pushing her head up and down against the floor. Sullivan stood and Starlight threw Sullivan’s wallet into the hallway. Sullivan picked up the wallet and its contents, and walked into the next room. Starlight followed. As she turned a corner, Sullivan struck her near her right eye, causing Starlight to fall and see white spots.

Sullivan told Starlight to leave the house. When she protested, Sullivan threatened to shoot her. Sullivan had a handgun and multiple rifles at home. Scared and in pain, Starlight

¹ Ind. Code § 35-45-2-1.

ran out and drove immediately to a police station. Officer Scott Ferrer (“Officer Ferrer”) observed that Starlight was bleeding near her right eye, had small scratches on the right side of her face, redness on one elbow and one ear, and bruising on her arm.

Sullivan was charged with intimidation as a Class D felony, domestic battery as a Class A misdemeanor, battery as a Class A misdemeanor, and criminal confinement as a Class D felony. At a bench trial, Sullivan was convicted of intimidation and domestic battery. The trial court sentenced Sullivan to concurrent sentences of one year each, with 361 days suspended. He now appeals.

Discussion and Decision

A. Standard of Review

Our standard of review when considering the sufficiency of the evidence is well settled. We will not reweigh the evidence or assess the credibility of witnesses. Robinson v. State, 699 N.E.2d 1146, 1148 (Ind. 1998). Rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. Id. We will uphold a conviction if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. Id. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. Wilson v. State, 770 N.E.2d 799, 801 (Ind. 2002).

² Ind. Code § 35-42-2-1.3.

B. Analysis

On appeal, Sullivan argues that the evidence is insufficient to support his convictions of intimidation and domestic battery. To convict Sullivan of intimidation, the State was required to prove that Sullivan: communicated a threat; to another person; with the intent; that the other person engage in conduct against the other person's will. Ind. Code § 35-45-2-1(a). The offense is elevated to a Class D felony if the threat is to commit a forcible felony. Ind. Code § 35-45-2-1(b).

The record reveals that Sullivan threatened to shoot Starlight if she did not leave the home. Sullivan was fighting with Starlight and he had access to multiple guns in the home. At first, Starlight objected to leaving, but once threatened, she fled to a police station. It is well established that the testimony of a single eyewitness is sufficient to sustain a conviction. Brasher v. State, 746 N.E.2d 71, 72 (Ind. 2001). Therefore, the evidence is sufficient to support Sullivan's conviction for intimidation as a Class D felony.

To convict Sullivan of domestic battery, the State was required to prove that Sullivan: knowingly or intentionally touched; his wife Starlight; in a rude, insolent, or angry manner; that resulted in bodily injury to Starlight. Ind. Code § 35-42-2-1.3(a). Here, Starlight testified that Sullivan shoved her, pushed his knee into her ribs, repeatedly pushed her head up and down against the floor, and hit her near her right eye. Officer Ferrer observed bleeding near her right eye, scratches on her face, redness on her elbow and ear, and bruising on her arm. Meanwhile, both Sullivan and Starlight acknowledged that they were married at the time of the incident. The conviction of domestic battery is supported by the evidence.

Sullivan further contends that the State failed to rebut his claim of self-defense. A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. Ind. Code § 35-41-3-2(a). In order to prevail on such a claim, our Supreme Court has required a defendant to show that he was in a place where he had a right to be, did not provoke, instigate, or participate willingly in the violence, and had a reasonable fear of death or great bodily harm. Wilson, 770 N.E.2d at 800 (citing McEwen v. State, 695 N.E.2d 79, 90 (Ind. 1998)). If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. (citing Taylor v. State, 710 N.E.2d 921, 924 (Ind. 1999)).

Here, Sullivan had a right to be in his home. However, significant evidence contradicts his claim of self-defense. Sullivan pinned Starlight to the floor while repeatedly beating her head against the floor, he hit her, and threatened to shoot her if she did not leave. A reasonable person could find that his use of force was unreasonable, that he participated willingly in the violence, or that he lacked a reasonable fear of death or great bodily harm. The testimony of two witnesses and several photographs provides sufficient evidence upon which the trial court could reasonably have found that the State negated Sullivan's claim of self-defense.

For the foregoing reasons, we affirm Sullivan's convictions for intimidation as a Class D felony and domestic battery as a Class A misdemeanor.

Affirmed.

RILEY, J., and MAY, J., concur.